

1 Susan L. Oliver (SBN 160902)  
2 Mina Miserlis (SBN 194068)  
3 **WHITE, OLIVER & AMUNDSON**  
4 A Professional Corporation  
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6 San Diego, California 92101  
7 Telephone: (619) 239-0300  
8 Facsimile: (619) 239-0344

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10 Attorneys for Defendant Ira Grossman

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOHN ESPINOZA, an individual ) CASE NO. 07 CV 2218 LAB (RBB)

Plaintiff,

v.

CITY OF IMPERIAL, a public entity; )  
MIGUEL COLON, an individual; IRA )  
GROSSMAN, an individual; and DOES 1- )  
50, inclusive )

Defendants.

) DECLARATION OF SUSAN L. OLIVER  
SUBMITTING THE DECLARATION OF  
RAUL CADENA IN SUPPORT OF IRA  
GROSSMAN'S MOTION FOR  
ATTORNEY'S FEES AS PREVAILING  
PARTY ON ANTI-SLAPP MOTION  
[C.C.P. § 425.16]

Date: August 18, 2008  
Time: 11:15 a.m.  
Judge: Hon. Larry A. Burns  
Ctrm: 9

1. I am an attorney at law duly licensed to practice before all courts in the  
State of California, and am licensed to practice before the United States District Court,  
Southern District of California. I am a partner with the law firm of White, Oliver &  
Amundson, A.P.C., attorneys of record for Defendant Ira Grossman. I have personal  
knowledge of the contents of this declaration and if called upon I could and would  
competently testify thereto.

2. On or about March 25, 2008, the law firm of Cadena Churchill was  
retained as personal counsel for Dr. Grossman, prior to the case being referred to the  
law firm of White, Oliver & Amundson.

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3. During its representation of Dr. Grossman, the law firm of Cadena  
1 Churchill discussed with Plaintiff's counsel, Vincent Tien, the applicability of Civil Code  
2 section 47 and the Anti-SLAPP statutes to Plaintiff's claims. Mr. Cadena requested that  
3 Mr. Tien dismiss the lawsuit or alternatively grant him a brief extension of time to  
4 respond to Plaintiff's complaint. Mr. Tien refused both requests. Mr. Cadena then  
5 referred Dr. Grossman to my firm. Although we prepared the Anti-SLAPP motion and  
6 motion to dismiss, we reviewed and relied upon some of the initial work that was done  
7 by Mr. Cadena's office.

8. 4. I am hereby submitting the Declaration of Raul Cadena in Support of  
9 Defendant Ira Grossman's Motion for Attorney Fees as Prevailing Party on Anti-SLAPP  
10 Motion, a true and correct copy of which is attached hereto as Exhibit A.

11 I declare under penalty of perjury under the laws of the United States of America  
12 that the foregoing is true and correct and that this Declaration was executed this 19th  
13 day of August, 2008, at San Diego, California.  
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15 s:/Susan L. Oliver  
16 Susan L. Oliver

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**EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 JOHN ESPINOZA, an individual ) CASE NO. 07 CV 2218 LAB (RBB)  
12 Plaintiff, )  
13 v. )  
14 )  
15 CITY OF IMPERIAL, a public entity; MIGUEL )  
16 COLON, an individual; IRA GROSSMAN, an )  
17 individual; and DOES 1-50, inclusive )  
18 Defendants. )  
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DEclaration of RAUL CADENA in  
SUPPORT OF DEFENDANT IRA  
GROSSMAN'S MOTION FOR ATTORNEY  
FEES AS PREVAILING PARTY ON ANTI-  
SLAPP MOTION

Judge: Hon. Larry Burns  
Ctrm: 9

COMES NOW, declarant, RAUL CADENA, and declares as follows:

1. I am an attorney at law duly licensed to practice before all the courts in the State of California and a partner of Cadena Churchill, LLP. I am licensed to practice before the United States District Court Southern District of California. I have personal knowledge of all matters stated herein, and if called as a witness could competently testify thereto, except as to those matters stated upon information and belief, and as to those matters I believe them to be true.

2. This Declaration is submitted in support of Plaintiff's motion for attorney's fees as prevailing party on the Anti-SLAPP motion.

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1       3. Our office was initially retained by Mr. Grossman on or about March 25, 2008, to  
2 evaluate this matter and to file a responsive pleading on his behalf which was due on or before April 7,  
3 2008. When it became apparent that the Anti-SLAPP statute was applicable in this case, I telephoned  
4 Plaintiff's counsel, Vincent Tien, on or about April 2, 2008, and requested that he dismiss Mr. Grossman  
5 from the suit or in the alternative, grant a courtesy ten (10) day extension. I explained to Mr. Tien that  
6 I had a brief, pre-paid, family trip commencing April 4, 2008, with a return date to my office of April  
7 9, 2008, which was after the due date for a response and that I would need some additional time to  
8 respond. I further explained to Mr. Tien the applicability of the Anti-SLAPP statute. After our  
9 conversation, and on the same date, I sent Mr. Tien a letter again requesting that he dismiss Mr.  
10 Grossman and that he grant an extension of ten (10) days. (Attached hereto as **Exhibit "1"** is a true and  
11 correct copy of the letter dated April 2, 2008.) Mr. Tien refused to grant an unconditional courtesy  
12 extension. (Attached hereto as **Exhibit "2"** is a true and correct copy of the letter dated April 3, 2008.)  
13 Accordingly, our firm immediately referred Mr. Grossman to the law firm of White, Oliver & Amundson  
14 for representation in this matter. At that time, we forwarded to the attorneys for White, Oliver &  
15 Amundson, the preliminary draft pleadings our office had prepared on the motion to dismiss. The need  
16 to refer this matter to another firm could have been avoided had Mr. Tien agreed to a simple, ten (10)  
17 day extension.

18       4. I received a B.A. degree in Sociology from Harvard University in 1989. In 1988, I also  
19 studied the economy, society and politics of Spain at the Universidad Complutense in Madrid, Spain.  
20 I received my J.D. degree, from the University of California at Berkeley (Boalt Hall School of Law) in  
21 1993. I was admitted to practice in California in 1996 and am also admitted to practice in Texas.

22       5. After passing the bar in Texas, I practiced as an associate with the law firm of Brown  
23 McCarroll & Oaks Hartline in Austin, Texas. I practiced in the area of general civil litigation and  
24 employment law. The firm is headquartered in Austin and is the largest full service law firm in Austin,  
25 with branch offices throughout Texas.

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1       6.     I lateralized to the labor and employment law firm of Littler Mendelson in San Diego,  
 2 California in 1996, became licensed in California and practiced management side employment law  
 3 through approximately 1998. I next lateralized to the law firm of Sullivan, Hill, Lewin, Rez & Engel and  
 4 worked with their trial team, taking no less than three employment cases to trial as second chair before  
 5 founding the law firm of Cadena Churchill, LLP, approximately four (4) years ago.

6       7.     I have given numerous speeches, presentations, and seminars on various  
 7 employment-related topics. I have taught law related courses as an adjunct instructor at Southwestern  
 8 College. I am an active member of various professional organizations and serve on some of their  
 9 leadership boards. For example, I am a member of the Consumer Attorneys of San Diego, the San Diego  
 10 County Bar Association, the California Employment Lawyers Association, the National Employment  
 11 Lawyers Association and the Association of Trial Lawyers of America. I am currently a member of the  
 12 Board of Directors of Consumer Attorneys of San Diego (“CASD”) and I am the Column Editor for the  
 13 Employment Law Column in Trial Bar News, a CASD publication. In addition to being a member of  
 14 the Board of Directors for the National Conflict Resolution Center (“NCRC”), I am on their board  
 15 governance committee and I also mediate workplace disputes for NCRC. I have worked in the area of  
 16 employment law for no less than fifteen (15) years.

17       8.     Cadena Churchill, LLP is a civil litigation firm handling complex cases with  
 18 approximately eighty percent (80%) of our current cases being class actions relating to employment  
 19 claims. The remaining approximate twenty percent (20%) of our case load constitutes insurance bad  
 20 faith, breach of contract, and matters involving violations of the Consumer Legal Remedies Act.

21       9.     I have personally acted as Co-Lead Counsel in numerous employment class actions over  
 22 the past four (4) years. Those cases are as follows:

23       a.     Rippee v. Boston Market Corporation; USDC Case No. 05-CV-1359BTM (JMA), which  
 24 settled in conjunction with Barile v. Boston Market Corporation, USDC Case No. 05-CV-1360BTM  
 25 (JMA), settled for \$3,500,000.00 and was an employment class action;

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1                   b.     Quenaon, et al. v. Mobile Systems Wireless, et al.; SDSC Case No. GIC847278, which  
2 settled for a cash fund of \$500,000.00 on behalf of Managers, Assistant Managers and Sales  
3 Representatives was an employment class action; Because the company was struggling financially, a  
4 percentage of future profits was negotiated to be distributed to class members above and beyond the  
5 immediate cash fund;

6                   c.     Sanchez, et al. v. Harry Singh & Sons Farming Limited Partnership, et al.; SDSC Case  
7 No. GIC872854, recently settled for \$2,500,000.00 on behalf of farm workers picking tomatoes in San  
8 Diego County. Said case was a wage and hour case;

9                   d.     Franco, et al. v. Ecology Auto Parts, Inc. et al.; Case No. GIC840600, an employment  
10 class action which has settled for \$1,100,000.00 on behalf of all store clerks, security guards, and yard  
11 workers employed by Ecology Auto Parts, Inc. in San Diego County;

12                   e.     Estrada, et al. v. Punjab Farms & Samra Produce, Inc., et al.; Case No. INC062669, an  
13 employment class action lawsuit currently pending alleging in Indio, California;

14                   f.     Mejia v. Einstein Bros. Bagels, Inc. et al.; Case No. 37-2007-00078701-CU-OE-CTL,  
15 an employment class action lawsuit currently pending and alleging violations of California wage and  
16 hour laws; and

17                   g.     Rees v. Penske Automotive Group, Inc. et al.; Case No. 37-2007-00082793-CU-OE-CTL,  
18 a class action lawsuit currently pending alleging violations of California wage and hour laws.

19                   10.    In addition to the above-named cases, during the past four (4) years I, along with the other  
20 attorneys in our firm, have handled the following cases:

21                   a.     Confidential insurance bad faith settlement against DOE Insurance Carrier in an amount  
22 of \$1,750,000.00.

23                   b.     Confidential personal injury settlement against DOE Insurance Carrier in an amount of  
24 \$3,600,000.00.

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1       11. My billing rate in this case was four hundred and twenty-five dollars per hour (\$425.00).  
 2 In 2007, in the employment class action case of Sanchez, et al. v. Harry Singh & Sons Farming Limited  
 3 Partnership, et al.; SDSC Case No. GIC872854, the San Diego Superior Court awarded me an hourly  
 4 rate of \$425.00. My rate has since increased. However, for purposes of this case, I am requesting my  
 5 previous hourly rate of four hundred and twenty-five dollars per hour. I am aware that attorneys who  
 6 work in the area of employment law have rates that range between \$350.00 and \$550.00 per hour.

7       12. Colin Morris, who is a law clerk with our firm, is a law graduate of the University of San  
 8 Diego School of Law, has passed the bar exam and is waiting to be licensed. Mr. Morris' hourly rate  
 9 is \$150.00. He spent a total of 17 hours researching applicable defenses and drafting the memorandum  
 10 of points and authorities in support of the motion to dismiss.

11       13. Mr. Churchill, who is of counsel to our firm, has over 35 years of litigation experience  
 12 on behalf of consumers in the area of insurance bad faith. His accomplishments as a trial lawyer are well  
 13 known throughout California. Mr. Churchill is celebrated for his success as appellate counsel where he  
 14 successfully defended favorable verdicts that have had a lasting, beneficial impact on consumers and  
 15 their lawyers including Brandt v. Superior Court, 37 Cal. 3d 813 (1985), Delos v. Farmers Insurance  
 16 Exchange, 93 Cal. App. 3d 642 (1979) and Chu v. Canadian Indemnity, 224 Cal. App. 3d 86 (1990). In  
 17 1975, the Consumer Attorneys of San Diego recognized him for his accomplishments by naming him  
 18 as the Trial Lawyer of the Year.

19       14. Mr. Churchill has given speeches, presentations and seminars on topics related to  
 20 insurance bad faith. Mr. Churchill actively supports consumer attorney organizations and has been a  
 21 Member of the Board of Governors of Consumer Attorneys of California, Board Member and Vice-  
 22 President of the San Diego County Bar Association, Board Member and President (1975) of the  
 23 Consumer Attorneys of San Diego and a Member of the American Board of Trial Advocates. Mr.  
 24 Churchill is currently a member of the San Diego County Bar Association, the Consumer Attorneys of  
 25 San Diego, the California Association of Consumer Attorneys, the Association of Trial Lawyers of  
 26 American and is an Advocate Emeritus of the American Board of Trial Advocates. In 1999, Mr.  
 27 Churchill was selected to be the first member of the Consumer Attorneys of San Diego Trial Lawyer's  
 28 Hall of Fame. Mr. Churchill's hourly rate is \$450.00.

1 15. In total, our firm spent 24 hours on this matter for a total of \$6,002.50 in attorney fees.

2 16. The following table is a summary of the attached time logs showing the time incurred

3 through our firm and the value of such services.

	Name	Hours	Rate	Lodestar
4	Atty Raul Cadena	4.10	425.00	\$1,742.50
5	Atty Gordon Churchill	3.80	450.00	\$1,710.00
6	Colin Morris	17.00	150.00	\$2,550.00
7	<b>TOTAL</b>	24.90		\$6,002.50
8				

9 17. A true and correct copy of my firm's time records, are attached hereto as **Exhibit "3"**.

10 18. Specifically, our office: (1) researched the law applicable to the Plaintiff's claims against

11 Mr. Grossman and defenses available to Mr. Grossman; (2) prepared a draft of the motion to dismiss the

12 Complaint; and (3) met and conferred with Plaintiff's counsel, Vincent Tien.

13 I declare under penalty of perjury under the laws of the United States of America that the  
14 foregoing is true and correct and that this declaration was executed on August 19, 2008, at San Diego,  
15 California. 

RAUL CADENA

# **EXHIBIT “1”**

RAUL CADENA\*  
KRISTEN L. CHURCHILL  
  
GORDON S. CHURCHILL,  
OF COUNSEL

**CADENA CHURCHILL, LLP**

ATTORNEYS AT LAW  
1202 KETTNER BLVD., SUITE 4100  
SAN DIEGO, CA 92101

TEL: 619.546.0888  
FAX: 619.923.3208  
readena@cadenachurchill.com

\*Also admitted in Texas

April 2, 2008

**VIA FACSIMILE ONLY: 714.544.4337**

Vincent J. Tien, Esq.  
Law Offices of Vincent J. Tien  
17291 Irvine Blvd Ste 150  
Tustin, CA, 92780

Re: Espinoza v. City of Imperial, et al.

Dear Mr. Tien:

We have been asked to represent the interests of Ira Grossman, PhD in the lawsuit filed by you on behalf of John Espinoza.

It clearly appears that Civil Code 47 precludes this lawsuit against Dr. Grossman. In addition, Mr. Espinoza signed two releases for release of information. Both of these releases are enclosed. Moreover, Dr. Grossman sent the evaluation to no one except the City of Imperial.

Furthermore, the anti-SLAPP statute applies, which will make you and your client liable for Dr. Grossman's attorney fees. Finally, pursuant to the requirements of FRCP 11, we are giving you an opportunity to dismiss Dr. Grossman from this lawsuit. If you do not do so, we will seek attorney fees as sanctions under Rule 11.

If and only if Dr. Grossman is dismissed by tomorrow, Thursday April 3, 2008, 5 PM, we will waive any claim for attorney fees incurred thus far in our research and evaluation of this matter.

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Vincent J. Tien, Esq.

April 2, 2008

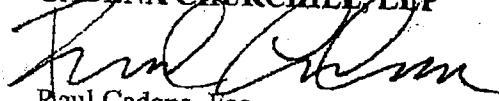
Page 2

Please respond by return FAX. If you do not agree to dismiss Dr. Grossman, we ask for a courtesy 10 day extension to respond to the lawsuit. If you grant the extension to respond, we will in turn grant a five day extension on the above deadline.

Should you have any questions, please feel free to contact our office.

Very truly yours,

CADENA CHURCHILL, LLP



Raul Cadena, Esq.

RC:dm

Encl.

## **EXHIBIT “2”**

LAW OFFICES OF  
**VINCENT J. TIEN**  
17291 Irvine Boulevard, Suite 150  
Tustin, CA 92780

Telephone (714) 544-8436  
Facsimile (714) 544-4337

April 3, 2008

SENT BY FACSIMILE AND U.S. MAIL  
(619) 234-3641

Raul Cadena, Esq.  
CADENA CHRUCHILL, LLP  
1202 Kettner Blvd., Suite 4100  
San Diego, CA 92101

Re: My Client: Plaintiff John Espinoza  
Your Client: Defendant Ira Grossman  
U.S. District Court No. 07CV02218 LAB (RBB)  
Response Re: Meet and Confer, Your Motion to Dismiss

Dear Mr. Cadena:

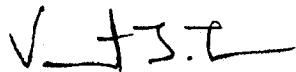
This letter is in response to yours of April 2, 2008. You have asserted that Civil Code §47 precludes this lawsuit against your client. I respectfully disagree. Civil Code §47 generally provides a privilege for publications or broadcasts. However, the law does not protect the defamatory statements that your client is alleged to have made, in writing, to Officer Espinoza's employer (and supervisor). Please refer to the case of *Pettus v. Cole* (1996), 49 Cal.App.4th 402, 57 Cal.Rptr.2d 46.

The consent forms, likewise, will be unavailing to your client as a defense. Even assuming, for arguments sake, that your client's communications were privileged, and the consent forms valid, the privilege is abused if the defamation was carried out with malice (which is alleged).

Accordingly, we will not dismiss Dr. Grossman from the lawsuit at this time. As I indicated to you over the telephone, we would not have sued Dr. Grossman absent a good faith belief that Dr. Grossman can, and should, be held responsible for substantial damage that he caused Officer Espinoza. I appreciate your candor in discussing these matters with me at this early stage of litigation and I renew my offer to you that if Dr. Grossman agrees to file only an answer (no motions) as his responsive pleading, then I will grant a short (not to exceed 14 days) extension of time for him to do so.

Finally, we are willing to consider an early settlement of this matter as to your client. If you would like to discuss potential resolution, do not hesitate to contact me.

Sincerely,



Vincent J. Tien, Attorneys for John Espinoza

**CADENA CHURCHILL LLP**

ATTORNEYS AT LAW

1202 KETTNER BLVD., SUITE 410

SAN DIEGO, CA 92101

Telephone: (619) 234-3776; Fax: (619) 234-3641  
Tax ID 20-0169474

August 19, 2008

Espinoza v. Grossman, et al.

**PROFESSIONAL SERVICES**

			<u>Hrs/Rate</u>	<u>Amount</u>
<b><u>FEES</u></b>				
3/24/2008 -	GSC	Telephone conference with client	0.40 450.00/hr	180.00
3/25/2008 -	RC	Review and analyze first amended complaint; preliminary research regarding available immunities; telephone conference with I. Grossman re complaint	1.30 425.00/hr	552.50
3/26/2008 -	CM	Research (Lexis) case law: Public official immunity, California statutes, City of Imperial Municipal Code	4.00 150.00/hr	600.00
	- GSC	Draft letter to City of Imperial; e-mail to client	0.40 450.00/hr	180.00
3/27/2008 -	CM	Research; begin draft - motion to dismiss	4.00 150.00/hr	600.00
3/28/2008 -	CM	Draft motion to dismiss; review similar pleadings; research (public official immunity, defamation, psychiatrist liability)	5.50 150.00/hr	825.00
3/30/2008 -	CM	Add'l research (intentional infliction of emotional distress/defamation); complete draft motion to dismiss; email to G. Churchill and R. Cadena for review	3.50 150.00/hr	525.00
3/31/2008 -	GSC	Discuss motion to dismiss & Anti-SLAPP with client	0.20 450.00/hr	90.00
	- GSC	Telephone conference with D. White; e-mail from D. White	0.20 450.00/hr	90.00

Espinoza v. Grossman, et al.

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			<u>Hrs/Rate</u>	<u>Amount</u>
4/1/2008 -	RC	Review and revise motion to dismiss; telephone conference with G. Churchill re same; research re: Anti-SLAPP requirements	1.40 425.00/hr	595.00
	- GSC	Review lawsuit pleadings & analyze	0.50 450.00/hr	225.00
4/2/2008 -	RC	Review and revise draft letter to V. Tien; telephone conference with V. Tien regarding request for extension to respond to complaint; e-mail to G. Churchill re same; review various e-mails to and from D. White and to and from I. Grossman; review and revise draft of motion to dismiss; e-mail same to D. White and G. Churchill	1.20 425.00/hr	510.00
	- GSC	Telephone conference with R. Cadena; e-mail memo to R. Cadena and D. White	0.30 450.00/hr	135.00
4/3/2008 -	GSC	Review & analyze motion to dismiss draft; telephone conference & e-mail comments to D. White	0.50 450.00/hr	225.00
	- RC	Review correspondence from V. Tien; conference with G. Churchill re same	0.20 425.00/hr	85.00
4/4/2008 -	GSC	Telephone conference and e-mail from client	0.10 450.00/hr	45.00
	- GSC	Meeting with client	0.50 450.00/hr	225.00
4/8/2008 -	GSC	Review motion to dismiss; comments to client	0.50 450.00/hr	225.00
4/11/2008 -	GSC	Telephone conference with client re: malpractice insurer; duty to defend issues	0.20 450.00/hr	90.00
SUBTOTAL:			[ 24.90	6,002.50]
TOTAL FEES			24.90	\$6,002.50
TOTAL AMOUNT DUE				\$6,002.50

Name

Raul Cadena, Esq.  
 Colin Morris  
 Gordon S. Churchill

<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
4.10	425.00	\$1,742.50
17.00	150.00	\$2,550.00
3.80	450.00	\$1,710.00